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Supreme Court of the United States

October Term, 1950

No. 215

THE VALIER COMPANY, a Montana Corporation,
Petitioner,

vs.

THE STATE OF MONTANA, CAREY LAND ACT BOARD, comprised of Sam C. Ford, Governor; Sam W. Mitchell, Secretary of State; R. V. Bottomly, Attorney General; and PONDERA COUNTY CANAL AND RESERVOIR COMPANY, a Montana Corporation,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA
and
BRIEF IN SUPPORT THEREOF

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THOMAS'S HELENA

SUBJECT INDEX

Page

PETITION FOR WRIT OF CERTIORARI .. 1

A. SUMMARY AND STATEMENT OF THE MATTER INVOLVED 1

B. BASIS OF JURISDICTION 8

C. QUESTIONS PRESENTED 18

D. REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT 19

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI 23

I. OPINIONS OF THE COURT BELOW 23

II. JURISDICTION 24

III. STATEMENT OF THE CASE 24

IV. SPECIFICATIONS OF ERROR 24

V. ARGUMENT 25

Summary of the Argument 25

Federal Question Decided by Montana Supreme Court Not Previously Determined by This Court 26

Right or Title Set Up or Claimed Under Authority of Federal Patent 30

State Statute Construed in a Manner Repugnant to Federal Statute 32

State Statute Construed to Deprive Petitioner of Property in Violation of Due Process and Equal Protection Clauses of XIVth Amendment 33

State Statute Enlarged and Supplemented so as to Impair Obligations of Contracts 36

CONCLUSION 37

APPENDIX "A", Title 43, U. S. C. A., Sections 641, 642 38

APPENDIX "B", Sections 1976, 1980, 1983, Revised Codes of Montana, 1935 (Sections 81-2111, 81-2115, 81-2118, Revised Codes of Montana, 1947) 42

TABLE OF AUTHORITIES CITED

Page

CASES

Abie State Bank v. Bryan, 282 U. S. 765, 75 L. Ed. 690, 51 S. Ct. 252 12

Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 74 L. Ed. 1107, 50 S. Ct. 451 34

Chapman v. Goodnow's Adm'r., 123 U. S. 540, 31 L. Ed. 235, 8 S. Ct. 211 12

Chicago, Burlington and Quincy Railroad Co. v. Chicago, 166 U. S. 226, 41 L. Ed. 979, 17 S. Ct. 581 16

Coe v. Armour Fertilizer Works, 237 U. S. 413, 59 L. Ed. 1[illegible]7, 35 S. Ct. 625 34

Commissioner of Int. Rev. v. Beck's Estate et al, 129 F. (2d) 243 (2nd C. C. A.) 37

Creswell v. Grand Lodge K. of P., 225 U. S. 246, 56 L. Ed. 1074, 32 S. Ct. 822 12

De Peyster v. Mitchell, 6 N. Y. 467 ..... 32, 35

Douglass v. Pike County, 101 U. S. 677, 25 L. Ed. 968 ..... 15, 35, 37

Enterprise Irrig. District v. Farmers Mut. Canal Co., 243 U. S. 157, 61 L. Ed. 644, 37 S. Ct. 318 12

First National Bank v. Anderson, 269 U. S. 341, 70 L. Ed. 295, 46 S. Ct. 135 28

French-Glenn Live Stock Co. v. Springer, 185 U. S. 47, 46 L. Ed. 800, 22 S. Ct. 563 32

Georgia Power Co. v. Decatur, 281 U. S. 505, 74 L. Ed. 999, 50 S. Ct. 369 35

Great Northern R. Co. v. Sunburst Oil & Ref. Co., 287 U. S. 358, 77 L. Ed. 360, 53 S. Ct. 145 11

Henry Ford & Son, Inc., v. Little Falls Fibre Co., 280 U. S. 369, 74 L. Ed. 483, 50 S. Ct. 140 31

Indiana ex rel. Anderson v. Brand, 303 U. S. 95, 667, 82 L. Ed. 685, 1123, 58 S. Ct. 443, 755 28

In re Robinson, 61 Idaho 462, 103 Pac. (2d) 693 7

Longest v. Langford, 274 U. S. 499, 71 L. Ed. 1170, 47 S. Ct. 668 28

Page

Lytle v. State of Arkansas, 63 U. S. 193, 22 How. 193, 16 L. Ed. 306 31

Montana ex rel. Haire v. Rice, 204 U. S. 291, 51 L. Ed. 490, 27 S. Ct. 281 ..... 27, 31

Morrison v. Farmers' etc. State Bank, 70 Mont. 146, 225 Pac. 123 35

Myles Salt Co. v. Iberia Drainage District, 239 U. S. 478, 60 L. Ed. 392, 36 S. Ct. 204 16

North Side Canal Co., Ltd., v. Idaho Farms Co., 60 Idaho 748, 96 Pac. (2d) 232 ..... 7, 15, 19, 28

North Side Canal Co., Ltd., v. Idaho Farms Co., 107 Fed. (2d) 481 ..... 7, 15, 19

Orchard Homes Ditch Co. v. Snavely, 117 Mont. 484, 159 Pac. (2d) 521 34

Panama Refining Co. v. Ryan, 293 U. S. 388, 79 L. Ed. 446, 55 S. Ct. 241 35

Portneuf-Marsh Valley Canal Company v. Brown, 274 U. S. 630, 71 L. Ed. 1243, 47 S. Ct. 692 29

Reynolds v. Stockton, 140 U. S. 254, 35 L. Ed. 464, 11 S. Ct. 773 34

Rogers v. Alabama, 192 U. S. 226, 48 L. Ed. 417, 24 S. Ct. 257 12

St. Louis, I. M. & S. Co. v. Taylor, 210 U. S. 281, 52 L. Ed. 1061, 28 S. Ct. 616 13

Saunders v. Shaw, 244 U. S. 317, 61 L. Ed. 1163, 37 S. Ct. 638 34

Southern Ry. Co. v. Greene, 216 U. S. 400, 54 L. Ed. 536, 30 S. Ct. 287 36

Standard Oil Co. v. Missouri, 224 U. S. 270, 56 L. Ed. 760, 32 S. Ct. 406 34

State Tax Commission v. Van Cott, 306 U. S. 511, 83 L. Ed. 950, 69 S. Ct. 605 28

Straus v. American Publishers' Association, 231 U. S. 222, 58 L. Ed. 192, 34 S. Ct. 84 28

Twining v. New Jersey, 211 U. S. 78, 53 L. Ed. 97, 29 S. Ct. 14 36

Page

Western Union Teleg. Co. v. Lenroot, 323 U. S. 490, 89 L. Ed. 414, 65 S. Ct. 335 ..... 31, 35, 37

Windsor v. McVeigh, 93 U. S. 274, 23 L. Ed. 914 34

Wissner v. Wissner, 338 U. S. 655 32

Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220, 6 S. Ct. 1064 ..... 16, 36

STATUTES

The Carey Act, Sections 641, 642, Title 43, U. S. C. A., Appendix "A" 2, 4, 12, 13, 14, 24, 25, 27, 30, 31, 32

Section 1257, Title 28, U. S. C. A., Sub-section (3) 12

Section 1976, Revised Codes of Montana, 1935 (Section 81-2111, Revised Codes of Montana, 1947, Appendix "B" 5, 25

Section 1980, Revised Codes of Montana, 1935 (Section 81-2115, Revised Codes of Montana, 1947), Appendix "B" 4

Section 1983, Revised Codes of Montana, 1935 (Section 81-2118, Revised Codes of Montana, 1947), Appendix "B" 6, 13, 14, 25, 32

Sections 1966 to 1995, Revised Codes of Montana, 1935 (Sections 81-2101 to 81-2130, Revised Codes of Montana, 1947) 6

Section 7417, Revised Codes of Montana, 1935 (Section 58-305, Revised Codes of Montana, 1947) 34

Section 10519, Revised Codes of Montana, 1935 (Section 93-401-15, Revised Codes of Montana, 1947) 35

MISCELLANEOUS

XIVth Amendment to the Constitution of the United States 15, 25, 26, 33

Section 10, Article I of the Constitution of the United States 14, 25, 26

Sections 2 and 3, Article VIII, Constitution of Montana 8

28 Congressional Record 33

Kinney on Irrigation and Water Rights 33

Rules of Montana Carey Land Act Board 4

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

A.
SUMMARY AND STATEMENT OF THE MATTER INVOLVED

The Supreme Court of Montana has interpreted an Act of Congress known as the Carey Act. Then it has stated

that the Montana legislature must have had this same interpretation in mind when it enacted certain statutes implementing the Act in that state and creating a lien authorized by an amendment to the Act. Finally, it has declared that the entire Carey Act (as amended), and all of the associated Montana statutes, are part and parcel of certain contracts between the State of Montana and petitioner's predecessors, and of certain conveyances of land to settlers, by that state, just as if they were written out in full therein. The Court's interpretation of the Carey Act, plus its construction of the Montana statutes, then produce results which deprive your petitioner of rights and privileges conferred by the Carey Act (as amended), and contravene petitioner's Constitutional rights.

Immediately affected are petitioner's rights to around 20,000 acres of irrigated "Carey Act" land located in Pondera County, Montana, and appurtenant water rights. All of this land was originally granted by the United States to the State of Montana under the Carey Act (Act Aug. 18, 1894, c. 301, Sec. 4, 28 Stat. 422; Act March 3, 1901, c. 853, Sec. 3, 31 Stat. 1188; Act Jan. 6, 1921, c. 10, 41 Stat. 1085; now Sec. 641, Title 43, U. S. C. A. And Act June 11, 1896, c. 420, Sec. 1, 29 Stat. 434; now Sec. 642, Title 43, U. S. C. A.; see Appendix "A"). In turn, the State of Montana patented it to settlers, as prescribed by the Carey Act. Your petitioner's predecessor companies had no interest in these lands (other than their Carey Act liens) until they acquired title through foreclosures, or by deeds given in lieu of foreclosures.

Less immediately, but also affected, are the titles to an undetermined number of acres of Carey-Act land in Montana

and in other arid states. Wherever a foreclosure of a Carey-Act lien, or a deed in lieu of such foreclosure, is in a chain of title, both practical and technical difficulties will arise, if this Montana decision is allowed to prevail.

Petitioner, like its several predecessors, is a "Carey-Act construction company." The earlier companies contracted with the State of Montana to build an irrigation system to reclaim the Carey-Act lands which the United States granted to Montana, and to procure settlement on those lands. They also agreed to transfer, to an "operating company," title to the works and to the sources of water supply. The "construction company," in a Carey-Act set-up, sells to settlers shares of stock in the "operating company," and retains the proceeds. The shares represent membership in the "operating company," proportionate interest in its property, and entitle the holder to receive a stated amount of irrigation water from the system, each irrigation season. In turn, the settler must pay a yearly maintenance charge fixed by the "operating company," whether he uses the water or not. Both by contract and statute, in the present case, the stock is made inseparably appurtenant to a particular tract of land described on the face of the certificate. If the stock is not paid for in full at the time of purchase, the settler endorses the certificate in blank and delivers it to the "construction company" by way of security. In the present instance, each settler gave the "construction company" the right to vote the stock, as his proxy, until 35% of the purchase-price should be paid. (R. 27.)

The price of the "water-stock", as contemplated by the amendment to the Carey Act, is fixed, in the contract between

the "construction company" and the state, at a level sufficient to recover construction costs and expenses, plus a reasonable profit. That profit, in turn, amounts to reasonable interest on the investment, over a specified period of time.

On June 11, 1896 (see Act June 11, 1896, c. 420, Sec. 1, 29 Stat. 434; now Sec. 642, Title 43, U. S. C. A.), Congress amended the Carey Act, saying:

> "A lien or liens is hereby authorized to be created by the state to which such lands are granted and by no other authority whatever, and when created shall be valid on or against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers."

That this amendment grew out of practical necessity, is shown by the debates in the United States House of Representatives, and is admitted by the Montana Supreme Court. (R. 115.)

The State of Montana patented all the Carey Lands (here involved) direct to settlers which petitioner's predecessors procured. The Carey Act imposed on the state, and on nobody else, the duty to sell the land in tracts of 160 acres or less, to any one person, and adjured the state alone to see to it that such lands were occupied and cultivated by actual settlers. By Section 1980, R. C. M. 1935, now Sec. 81-2115, R. C. M. 1947 (see Appendix "B"), and Rule 8 of Montana's Carey Land Act Board (R. 152), an entryman received only a "Certificate of Location," at the outset, and got a patent to the Carey land only after he had proved actual

settlement and cultivation to the Board. At no place in the Carey Act itself, or in any of the Montana statutes associated with it, or in any of the contracts between the State of Montana and the various predecessor "construction companies" of petitioner, is any express direction given to a "construction company" to sell Carey lands to any class or classes of persons, at any price or prices, or in any maximum area or amount.

Section 1976, R. C. M. 1935, now Section 81-2111, R. C. M. 1947 (see Appendix "B"), and the 1909 and 1912 "construction contracts" with the State of Montana (R. 45, 61-62) make it clear that without permission from the Carey Land Act Board of that state, The Valier Company (your petitioner) cannot transfer title to the irrigation-system (even if completed, approved, and accepted), to Pondera County Canal and Reservoir Company (the "operating company"), unless and until 90% of the total number of shares of "water-stock" shall have been sold to settlers and paid for in full by them. In the meantime, Section 1976, now Sec. 81-2111, R. C. M. 1947, (see Appendix "B"), compels the "construction company" to furnish 1½ acre feet of water, per acre, to the holders of "water-stock," each irrigation-season, for a maximum charge of $1.00 per acre. (One and one-half acre feet is the amount per acre called for in the construction contracts (R. 25) and the figure later set out in the "water-stock" certificate.) It is important to petitioner, or to any Carey-Act "construction company" similarly situated, to know whether it can count, toward the achievement of the "90% level," shares of "water-stock" which its predecessor companies acquired by foreclosing Carey-Act

liens or by accepting deeds in lieu of such foreclosures from defaulting settlers. If deeded or foreclosed shares cannot be so counted, and settlers successively default, sale of 90% of the shares may never be accomplished, or may require an inordinate length of time.

The statutes which the Montana legislature enacted to create the Carey-Act lien, and to place the state in a position to receive the advantages of the Federal Act, are Secs. 1966 to 1995, R. C. M. 1935; now 81-2101 to 81-2130, R. C. M. 1947. Sec. 1983, R. C. M. 1935, now Sec. 81-2118, R. C. M. 1947, gives a "construction company" a security lien for unpaid balances due on "water-stock" purchases against both the land and the appurtenant stock.

Petitioner contends that a "construction company" which forecloses such a lien or receives delivery of a deed in lieu of such foreclosure from a defaulting settler, receives an unqualified fee-simple title to the Carey land and appurtenant "water-stock," free from any obligations as to their further sale and conveyance; also, that any balance due on shares so acquired has been paid for, in full, in land, by the defaulting settler; and that such shares may therefore be counted toward attainment of the "90% level." The trial Court so held. (R. 95 to 103.)

On appeal, the Supreme Court of Montana reversed the trial Court on both points, basing its decision on grounds which were not supported by evidence and which no party to the action had submitted or urged. (R. 141- 142.) Said Court also asserted that the two cases upon which petitioner had most heavily relied were not in point. (R. 118.) Mr.

Associat Justice Angstman, in a dissenting opinion (R. 138) upholding all of petitioner's views, declared that these two decisions *(North Side Canal Company, Limited, v. Idaho Farms Company* (1939), 60 Idaho 748, 96 Pac. 2d. 232, and the related case bearing the same name, in the C. C. A., 9th Circuit, reported in 107 F. 2d. 481), were squarely in point. He also cited the later case of *In re Robinson (Wendell Highway District No. 16, et al., Interveners)* (1940), 61 Idaho 462, 103 Pac. 2d. 693, as settling all doubts as to their relevancy.

The patent from the United States to the State of Montana (R. 105, 106) and the patent from the State of Montana to a settler (R. 107, 108) convey a fee-simple title which a settler later can convey to a neighbor who already has his 160 acres of Carey land. But here we have this extraordinary result: a creditor "construction company," which has a lien on a fee-simple title owned by its debtor, receives, on foreclosure, a title of lower quality; because restraints on alienation are applied to it, in the creditor's hands. A true lien, on foreclosure, gives a creditor at least as good a title as his debtor has; and the disfavor with which the law regards restraints on alienation is many centuries old.

The Carey Act of Congress authorized states to create true liens only, and did not contemplate restraints on alienation applicable to any person or persons other than the states. The State of Montana executed its trust, as to each piece of Carey land, as soon as it patented that land to an actual settler who had proved his eligibility. The "construction company" fulfilled its duty to procure settlement, on any given piece of Carey land, as soon as it procured a settler

who could (and did) prove his eligibility. It never contracted to reprocure such settlement over and over again.

In addition, if the "construction contracts" with the State of Montana include (by reference or necessary operation of law) all of the terms and conditions of the Carey Act, as the Supreme Court of Montana asserts, then the "construction company" has a contractual right to a true lien.

If the Montana decision is upheld, petitioner loses rights which the Carey Act of Congress meant it to have; and petitioner's contract rights are impaired in violation of the Constitution of the United States.

The Montana statute creating the Carey lien, and providing for its foreclosure, is almost exactly like the corresponding Idaho statute, which was construed by the Supreme Court of Idaho in a manner favorable to the position which petitioner here asserts. The words of the Montana statute are proper, but its interpretation is improper.

B.
BASIS OF JURISDICTION

1. The decision of the Supreme Court of the State of Montana was rendered January 10, 1950 (R. 109), and was made final by the denial of petitioner's Petition for Rehearing, and Remittitur to the trial Court, on March 29, 1950 (R. 225, 226); and it is this final judgment which petitioner seeks to have reviewed. The Supreme Court of the State of Montana is the highest court, and court of last resort, in said state (Sections 2 and 3, Article VIII, Constitution of Montana).

2. A Federal question regarding an interpretation of a Federal statute first appeared in the Opinion of the Supreme Court of Montana, rendered Jan. 10, 1950, where references to the Carey Act (of Congress) were made. The most pertinent of these references were as follows:

> "From the provisions of the Federal and State laws hereinabove quoted or referred to and said contracts executed pursuant thereto, it is manifest that it was the policy and intention of the Congress and of the Montana legislature that such Carey Act lands should be finally acquired only by actual settlers thereon in separate tracts of not to exceed 160 acres to each qualified settler.
>
> "The amendment of the Federal Act on June 11, 1896 (43 U. S. C. A., Sec. 642, quoted above), contains nothing to show a new or different policy or intention.
>
> "3 Kinney on Irrigation and Water Rights (2d Ed.) in section 1323 discusses the purposes of this amendment. There it is said: 'One object of the amendment was that it had been ascertained that the states named in the Act, and which were expected to take advantage of the same, either had not the means or were prohibited by their constitutions from lending their credit to the construction of the large canals and irrigation works necessary to reclaim large tracts of land; and that it was necessary to make some provision by which persons or corporations having ample means and acting for the States in the construction of these works, should be made secure by a lien or liens on the lands and water rights for the large sums of money necessarily advanced by them'.
>
> "Kinney also mentions that in the discussion of said amendment in Congress, it was 'pointed out that this

amendment, in the form in which it finally passed, would necessarily result in the acquisition by wealthy individuals and corporations of large bodies of land, to the exclusion of the settler. The result was practically, conceded by the friends of the measure.'

"Plaintiff is here seeking to have this amendment so construed." (R. 123, 124.)

"It is manifest from the provisions of the Montana law, enacted in 1905, accepting the provisions of the Carey Law and amendment thereof of June 11, 1896, and especially those found in sections 1976, 1980 and 1983, R. C. M. 1935, that the Montana legislature did not construe said amendment to the Federal Act as giving a lien holder, by foreclosure thereof or by deed in lieu of foreclosure, a right to acquire an unlimited title with unrestricted rights and powers to handle the lands embraced within a Carey Land Act project.

"Section 642 of the Federal Act authorizes the state to create a lien on such lands, which will be valid thereon 'until disposed of to actual settlers.' " (R. 124, 125.)

"The construction company at this point in the development of the project, says it is now the owner of these lands and water and therefore it has complied with the statutes in such case provided, has met its contract obligation as to the '90% level,' and may now sell to anyone in unlimited amounts, or all to one, or retain it as it desires. To sustain such contention would be to completely disregard the intent of the Act, the meaning of the special Montana lien statute, the contractual obligation of the construction company and would be tantamount to a rejection of the principles and purposes of the project." (R. 133.)

The opinion is replete with other statements demonstrating that the Montana Court found the Federal Act to be controlling.

In the last excerpt quoted above the Supreme Court of Montana not only construed the amendment to the Federal Act, but also placed its own construction thereof in the mouth of the Montana legislature. The meaning of the Montana statute was made to depend on the interpretation of the amendment to the Act of Congress. The interpretation of the Carey Act also "follows through" into the Court's interpretation of the patents to the settlers, issued under the authority of the United States, and into the Court's interpretation of the contract between the State of Montana and the predecessor "construction companies."

Your petitioner, in its Petition for Rehearing, filed Feb. 10, 1950, urged that the Court's interpretation of the Carey Act was strained and unwarranted. (R. 140-220.) This was the first opportunity petitioner had to deal with an interpretation of the Federal Carey Act, and this Court has jurisdiction of the Federal questions under the authority of *Great Northern R. Co. v. Sunburst Oil & Ref. Co.*, 287 U. S. 358, 366-367, 77 L. Ed. 360, 367-368, 53 S. Ct. 145 (Dec. 1932).

The Opinion of the Supreme Court of Montana alludes to the amendment to the Carey Act as an enabling act only, but the Court has construed it as being more than an enabling act. By suggesting local issues as the basis of its decision, when in fact the decision is bottomed on an interpretation of an Act of Congress, the Montana Supreme Court cannot preclude the jurisdiction of the United States Supreme Court.

Creswell v. Grand Lodge K. of P., 225 U. S. 246, 261, 56 L. Ed. 1074, 1080-1081, 32 S. Ct. 822 (June, 1912).

Chapman v. Goodnow's Adm'r, 123 U. S. 540, 548, 31 L. Ed. 235, 238, 8 S. Ct. 211 (Dec., 1887).

Rogers v. Alabama, 192 U. S. 226, 231, 48 L. Ed. 417, 419, 24 S. Ct. 257 (Jan., 1904).

If it be contended that the decision of the Montana Supreme Court is based upon state statutes dealing with "Carey" projects, as well as upon the Federal Act, the jurisdiction of this Court should be invoked on the theory that the non-federal question is so interwoven with the federal question, that the local ground alone cannot sustain the decision.

Enterprise Irrig. District v. Farmers Mut. Canal Co., 243 U. S. 157, 164, 61 L. Ed. 644, 648-649, 37 S. Ct. 318 (Mar., 1917).

Whether or not the decision was based upon Federal grounds, is (itself) a question which should be determined by this Court.

Abie State Bank v. Bryan, 282 U. S. 765, 773, 75 L. Ed. 690, 701, 51 S. Ct. 252 (Feb., 1931).

3. Jurisdiction is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 929, now Section 1257, Title 28, U. S. C. A., Sub-section (3), on the following bases:

(a) The statute of the United States under which a right, title or privilege is specially set up or claimed, is Section 4 of the Act of August 18, 1894, c. 301, 28 Stat. 422; as amended by Act of March 3, 1921, c. 853, Sec. 3, 31 Stat. 1188, and by the Act of Jan. 6, 1921,

c. 10, 41 Stat. 1085; (now Sec. 641, Title 43, U. S. C. A.); and particularly as amended by the Act of June 11, 1896, c. 420, Sec. 1, 29 Stat. 434; (now Sec. 642, Title 43, U. S. C. A.). Petitioner's Amended Complaint, in the trial Court, specifically alleged that the lands to which petitioner claimed title were Carey-Act lands. Therefore, whatever right, title or privilege petitioner had to these lands, was set up by, and claimed under, the statute of the United States above referred to, and found in Appendix "A" to this present Petition.

St. Louis I. M. & S. Co. v. Taylor, 210 U. S. 281, 292, 52 L. Ed. 1061, 1067, 28 S. Ct. 616 (May, 1908).

(b) Section 1983 of the Revised Codes of Montana 1935, as here interpreted by the Supreme Court of the State of Montana, is repugnant to the amendment embodied in the Act of June 11, 1896, c. 420, Sec. 1, 29 Stat. 434 (now Sec. 642, Title 43, U. S. C. A.). The Federal statute here referred to provides that a state, acting under the Carey Act, may create "a lien or liens * * * [which] shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation." Pursuant to the authority granted in this Federal statute, the legislature of the State of Montana enacted the above-referred-to state statute. But under the Opinion of the Montana Supreme Court in this present controversy, a "construction company" which forecloses its "Carey-Act lien" under the Montana statute, and which retains the property after all rights of redemption have expired, receives a title considerably inferior to the fee-simple title which its debtor possessed before the foreclosure. Therefore, the so-called lien created by Montana is not a lien at all; and the Montana statute

is repugnant to the Federal statute because the latter contemplates the creation of a true lien only.

(c) Section 1983, R. C. M. 1935, now Section 81-2118, R. C. M. 1947, (see Appendix "B"), as here interpreted by the Supreme Court of the State of Montana, impairs the obligation of the contract between predecessors of petitioner and the State of Montana, in violation of Section 10 of Article I of the Constitution of the United States. As stated by the Supreme Court of Montana in its Opinion (R. 121):

> "Under the rule for construction of contracts, hereinbefore stated, the provisions of said sections 641 and 642 of 43 U. S. C. A. and of sections 1976, 1980 and 1983, R. C. M. 1935, enter into and form a part of the contracts between the Carey Land Act Board and the predecessor companies of the plaintiff and are binding on the plaintiff."

The 1896 amendment to the Carey Act (Act of June 11, 1896, c. 420, Sec. 1, 29 Stat. 434; now Sec. 642, Title 43, U. S. C. A.) is specifically included in the construction contracts between the State of Montana and petitioner's predecessor "construction companies," according to the Montana Supreme Court. That Federal statute declares that the state may create a lien or liens. It further provides that these liens shall be "valid." There is no provision (in this or in any other Federal enactment concerning Carey-Act lands) for the creation of anything less than a lien. This decision of the Supreme Court of Montana holds that by foreclosing the so-called lien created by Sec. 1983, R. C. M. 1935, now Section 81-2118, R. C. M. 1947, (created under the Federal authorization), the "construction company" acquires something less than the title which the default-

ing settler possessed before foreclosure, even if all redemption rights have expired. The Montana statute (as thus interpreted) has created something less than a true lien; and, as so interpreted, it deprives petitioner of its contract right to a true lien. Therefore, there is an impairment of the obligation of contract, which violates Article I, Section 10, of the Constitution of the United States, above referred to.

Douglass v. Pike County, 101 U. S. 677, 687, 25 L. Ed. 968, 971 (Mar., 1880).

(d) Petitioner further contends that the decision of the Supreme Court of Montana (in this case) deprived petitioner of property without due process of law, and was therefore a violation of the Fourteenth Amendment to the Constitution of the United States. The Petition for Rehearing pointed out that the conclusions of the Supreme Court of Montana lacked foundation (either in the Acts of Congress or in the statutes of Montana) (R. 161, 179); that the Opinion was bereft of consistent legal theories to support it (R. 159-189); that as to the nature of the sale of the "water-stock" to a settler, the Opinion contravened a prior decision of the Montana Supreme Court (R. 201 to 204); that regarding the effects of foreclosure or the acceptance of deeds in lieu, the decision was contrary to the *North Side Canal Company* cases in the Supreme Court of Idaho and in the Circuit Court of Appeals, Ninth Circuit (R. 195 to 200); that the Opinion was based on false assumptions, contrary to the facts contained in the record (R. 141 to 149); that the decision turned upon questions injected into the case by the Montana Supreme Court itself, which none of the parties to the litigation had urged (R. 141, 142); that the decision introduced (without settling) a multitude of questions, with the result that

titles to Carey-Act lands were further impaired (R. 220). For these reasons petitioner alleges that the Opinion is arbitrary and capricious; and that it violated the "due process clause" of the Fourteenth Amendment to the Constitution of the United States.

Myles Salt Co. v. Iberia Drainage District, 239 U. S. 478, 484-485, 60 L. Ed. 392, 396, 36 S. Ct. 204 (Jan., 1916).

Chicago, Burlington and Quincy Railroad Co. v. Chicago, 166 U. S. 226, 233-234, 41 L. Ed. 979, 983-984, 17 S. Ct. 581 (Mar., 1897).

Yick Wo v. Hopkins, 118 U. S. 356, 373-374, 30 L. Ed. 220, 227, 6 S. Ct. 1064 (May, 1886).

(e) The Federal statute intended that the state should create a true lien on the separate subdivisions of the Carey-Act land reclaimed. This lien was to protect the "construction company's" costs and profits, if a settler defaulted; and the price of the stock was fixed (by the state and the company, in the "construction contract") at a level sufficient to equal those costs and profits. Where a state permits no deficiency judgment to be entered against a defaulting settler, as in Idaho and Montana, and the "water-stock" itself is made 'inseparably appurtenant" to the land (both by contract and state statute), a necessary result of foreclosure is *payment in full, by the settler, for the "water-stock," in property.* This is true, because under no other theory could the costs and profits be said to be truly secured. Thus the state lien-and-foreclosure statute, as here interpreted by the Montana Supreme Court, is repugnant to the Carey Act. The attention of the Supreme Court of Montana was directed to this conflict in the state

statute, as interpreted by it, and the Federal statute, in the Petition for Rehearing. (R. 218, 219.)

4. The questions as to the nature of the title to Carey-Act lands are substantial and far-reaching. Not only are the titles to petitioner's lands (aggregating approximately 20,000 acres) involved, but also affected are the titles to untold thousands of acres of Carey-Act lands throughout the western states of Montana, Colorado, Idaho, Nevada, Oregon, Washington and Wyoming, where titles acquired by Carey-Act "construction companies" by foreclosure or deeds in lieu thereof and then sold to other persons will be clouded and thrown into a state of confusion, if the decision of the Montana Supreme Court is allowed to stand. Many tracts of lands on other Carey projects in Montana, and in other states, follow a chain of title parallel to that here involved; and they have been freely conveyed, without regard to the restrictions and limitations imposed by the decision of the Supreme Court of Montana.

The Federal Carey Act set up the machinery for reclaiming Federal arid lands, and set up a method for financing such reclamation. The grant of the Federal government to the state was conditioned upon a complete reclamation; and the accomplishment of the reclamation of the lands here in question had to be recognized by the Federal authority. For a branch of a state government, at this late date, to unsettle titles which have been acquired through the functioning of the machinery provided by the Federal Act, is entirely inconsistent with anything ever contemplated by the Congress of the United States.

C.
QUESTIONS PRESENTED

1. Must petitioner sell its Carey-Act lands and appurtenant "water-stock", acquired by its predecessor "construction companies" through foreclosures or deeds in lieu, to a limited class of purchasers; and sell the land at the same prices at which the State of Montana sold it in its unimproved condition; and sell the stock at the prices fixed in the construction contracts between the State of Montana and the earlier "construction companies"; and sell said lands in tracts of 160 acres or less to any one buyer? Or may petitioner dispose of these items of property in any manner and at any prices it may see fit, just as any other purchaser at foreclosure sale when rights to redeem have expired?

2. Was the original sale of "water-stock", to a settler, a merely conditional sale, where title was retained for security purposes and his equitable rights were subject to forfeiture if he failed to pay for the stock? (This concept ignores the purposes of the Carey Act passed by Congress.) Or was this sale a final one, passing title immediately to the settler? (An earlier Montana case, not here expressly overruled, so holds.)

3. Did foreclosure, or acceptance of deed in lieu of foreclosure, constitute payment in full for the "water-stock" by the defaulting settler?

D.
REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The Supreme Court of Montana has decided Federal questions of substance not heretofore determined by this Court, and has decided them in a way probably not in accord with applicable decisions of this Court.

2. The highest court of the State of Idaho, and the United States Court of Appeals, Ninth Circuit, have reached a different conclusion from the Supreme Court of the State of Montana, to-wit: that a Carey Act construction company holds a free and unrestricted title to Carey Act lands and appurtenant water rights acquired by it through foreclosures. (*North Side Canal Company, Ltd., v. Idaho Farms Co.*, 60 Idaho 748, 96 Pac. (2d) 232; *North Side Canal Co., Ltd., v. Idaho Farms Co.*, 1939, C. C. A., 9th Circuit, 107 Fed. (2d) 481.)

3. The titles to untold thousands of acres of Carey Act lands (and appurtenant water rights) throughout the western states of Montana, Colorado, Idaho, Nevada, Oregon, Washington, and Wyoming will be clouded and thrown into a state of cofusion, if the decision is allowed to prevail, wherever the "construction company" appears in a chain of title.

4. The Supreme Court of Montana has based its decision (in this case) upon assumptions of fact and upon issues of law which are absent from the record and the pleadings; thereby denying to petitioner its right to notice and its right to be heard. It has arbitrarily and capriciously disregarded

the rules of appellate review, all concepts of statutory construction, all rules of the law of contracts, and has ignored its own prior decisions; and therefore it has deprived petitioner of valuable property rights in a manner amounting to confiscation, as forbidden by the "due process" and "equal protection" clauses of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of Montana has encroached upon the legislative prerogative; and, by so doing, has impaired the obligations of petitioner's contracts with the State of Montana, in violation of Section 10, Article I of the Constitution of the United States.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the seal of this Court, to the Supreme Court of the State of Montana, to the end that the judgment of the Supreme Court of the State of Montana may be reviewed by this Honorable Court.

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Petitioner

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